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NOV 07 2003

In re Application of:
Naegeli et al.
Application No. 09/325,534

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

Filed: June 03, 1999

For: METHOD AND APPARATUS FOR
MEASURING QUALITY OF UPSTREAM
SIGNAL TRANSMISSION OF A CABLE
MODEM

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: DECISION ON PETITION TO
: WITHDRAW HOLDING OF
: ABANDONMENT
:
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This is a decision on the copy of the CPA paperwork filed 7/28/03, which is being treated as a petition to withdraw the holding of abandonment of the above identified application.

In the above identified application, Final Rejection was mailed to the applicant on August 22, 2002. An After-Final response was filed by the applicant on October 22, 2002. An Advisory Action was mailed to the applicant on October 30, 2002, informing the applicant that the response was not persuasive. The three month shortened statutory period for reply to the final rejection lapsed without any further reply rendering this application abandoned. No Notice of Abandonment was mailed.

Petitioner asserts that a proper response in the form of a Continued Prosecution Application (CPA), including a one month extension of time was timely filed on December 06, 2002. In support of the petition, petitioner submits a copy of date stamped post card evidencing receipt of the CPA request on December 06, 2002, showing the Express mailing label # EV267519067US; a copy of a Transmittal Request for Continued Prosecution Application (CPA) with the same Express Mailing Label number thereon. A review of the U.S. Patent and Trademark Office Revenue, Accounting and Management (RAM) records reveal that the extension of time fee for one month in the amount of \$110.00 was also applied to the instant application on December 06, 2002.

The filing of papers and fees by Express mail is covered by 37 C.F.R § 1.10. 37 C.F.R 1.10 (e) states:

“Any person mailing correspondence addressed as set out in § 1.1 (a) to the Office with sufficient postage utilizing the “Express Mail Post Office to Addressee” service of the USPS, may petition the Commissioner to consider such correspondence filed in the Office on the USPS deposit date, provided that:

(1) the copy of the CPA paper work is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;

(2) the number of the “Express Mail” mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by “Express Mail”;

(3) the copy of the CPA paperwork includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official date entered by the USPS, a showing pursuant to paragraph (d) (3) of this section that the requested filing date was the date the correspondence was deposited in the "Express Mail Post office to Address" service prior to the last scheduled pickup for the day; and,

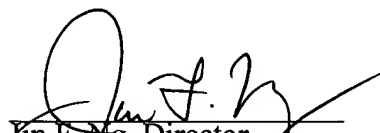
(4) the petition includes a statement which establishes, to the satisfaction of the Commissioner, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS."

Accordingly, the request to withdraw the holding of abandonment is deemed to meet the requirements.

Accordingly, the holding of the Abandonment is withdrawn.

The petition is **GRANTED**.

The Application file is being forwarded to the technical support staff for processing of the CPA request. Thereafter, the application will be forwarded to the examiner for appropriate action in due course.


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